

State of South Dakota

SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

490J0518

HOUSE BILL NO. 1118

Introduced by: Representatives Peterson (Bill), Konold, and Olson (Mel) and Senators
McCracken, Bogue, and Moore

1 FOR AN ACT ENTITLED, An Act to authorize banks to enter into debt cancellation and debt
2 suspension contracts and to exempt such contracts from insurance regulations.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 51A-1-2 be amended by adding thereto two NEW SUBDIVISIONS to read
5 as follows:

6 "Debt cancellation contract," a loan term or contractual arrangement modifying loan terms
7 under which a bank agrees to cancel all or part of a customer's obligation to repay an extension
8 of credit from the bank upon the occurrence of a specified event. The contract may be separate
9 from or a part of other loan documents. The term, debt cancellation contract, does not include
10 loan payment deferral arrangements in which the triggering event is the borrower's unilateral
11 election to defer repayment, or the bank's unilateral decision to allow a deferral of repayment;

12 "Debt suspension contract," a loan term or contractual arrangement modifying loan terms
13 under which a bank agrees to suspend all or part of a customer's obligation to repay an extension
14 of credit from the bank upon the occurrence of a specified event. The contract may be separate
15 from or a part of other loan documents. The term, debt suspension contract, does not include



1 loan payment deferral arrangements in which the triggering event is the borrower's unilateral
2 election to defer repayment, or the bank's unilateral decision to allow a deferral of repayment.

3 Section 2. That chapter 51A-4 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 A bank may enter into debt cancellation contracts and debt suspension contracts and charge
6 a fee for those contracts in connection with any extension of credit that it makes to its
7 customers.

8 Section 3. That § 58-1-3 be amended to read as follows:

9 58-1-3. No provision of this title applies with respect to:

- 10 (1) Fraternal benefit societies, except as stated in chapter 58-37A;
- 11 (2) Bail bondsmen, other than corporate sureties and their agents, except as stated in
12 chapter 58-22;
- 13 (3) Motor vehicle service contracts which are contracts or agreements to perform or
14 indemnify for a specific duration the repair, replacement, or maintenance of motor
15 vehicles for operational or structural failure due to a defect in materials,
16 workmanship, or normal wear and tear, with or without additional provisions for
17 incidental payment of indemnity under limited circumstances, including towing,
18 rental, and emergency road service. Consideration for a motor vehicle service
19 contract shall be stated separately from the price of the motor vehicle;
- 20 (4) Service agreements or extended warranty plans for which the primary purpose is to
21 provide service, repair, or replacement on consumer goods or products including
22 appliances, merchandise, or equipment, or mechanical/electrical systems in single or
23 multiple-family dwellings. Incidental indemnity payments under such plans where
24 service, repair, or replacement is not feasible or economical does not void this

1 exemption;

2 (5) Any person, trust, or other entity proven to be under the exclusive regulatory
3 authority of the federal government or another state agency;

4 (6) Any agreement to provide liability protection entered into pursuant to chapter 1-24
5 is exempt from the regulatory requirements of Title 58, except to forms of insurance
6 coverage provided by an insurer otherwise subject to the insurance laws of this state;

7 (7) Any church plan, as defined in section 414(e) of the Internal Revenue Code of 1986,
8 as amended through December 31, 1999, and section (3)(33)(C)(i) of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C. § 1002(33)(C)(i)); or any church
10 benefits board, as described in section 414(e)(3)(A) of the Internal Revenue Code of
11 1986, as amended through December 31, 1999, and section (3)(33)(C)(i) of the
12 Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002(33)(C)(i));

13 (8) Any debt cancellation contract or debt suspension contract as defined by this Act.